

108TH CONGRESS
1ST SESSION

S. 977

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a minor child's congenital or developmental deformity or disorder due to trauma, infection, tumor, or disease.

IN THE SENATE OF THE UNITED STATES

MAY 1, 2003

Mr. FITZGERALD (for himself, Mr. KENNEDY, and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

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1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Treatment of Chil-
3 dren’s Deformities Act of 2003”.

4 **SEC. 2. COVERAGE OF MINOR CHILD’S CONGENITAL OR DE-**
5 **VELOPMENTAL DEFORMITY OR DISORDER.**

6 (a) GROUP HEALTH PLANS.—

7 (1) PUBLIC HEALTH SERVICE ACT AMEND-
8 MENTS.—

9 (A) IN GENERAL.—Subpart 2 of part A of
10 title XXVII of the Public Health Service Act
11 (42 U.S.C. 300gg–4 et seq.) is amended by
12 adding at the end the following:

13 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR**
14 **MINOR CHILD’S CONGENITAL OR DEVELOP-**
15 **MENTAL DEFORMITY OR DISORDER.**

16 “(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-
17 GERY.—

18 “(1) IN GENERAL.—A group health plan, and a
19 health insurance issuer offering group health insur-
20 ance coverage, that provides coverage for surgical
21 benefits shall provide coverage for outpatient and in-
22 patient diagnosis and treatment of a minor child’s
23 congenital or developmental deformity, disease, or
24 injury. A minor child shall include any individual
25 through 21 years of age.

1 “(2) REQUIREMENTS.—Any coverage provided
 2 under paragraph (1) shall be subject to pre-author-
 3 ization or pre-certification as required by the plan or
 4 issuer, and such coverage shall include any surgical
 5 treatment which, in the opinion of the treating phy-
 6 sician, is medically necessary to approximate a nor-
 7 mal appearance.

8 “(3) TREATMENT DEFINED.—

9 “(A) IN GENERAL.—In this section, the
 10 term ‘treatment’ includes reconstructive sur-
 11 gical procedures (procedures that are generally
 12 performed to improve function, but may also be
 13 performed to approximate a normal appear-
 14 ance) that are performed on abnormal struc-
 15 tures of the body caused by congenital defects,
 16 developmental abnormalities, trauma, infection,
 17 tumors, or disease, including—

18 “(i) procedures that do not materially
 19 affect the function of the body part being
 20 treated; and

21 “(ii) procedures for secondary condi-
 22 tions and follow-up treatment.

23 “(B) EXCEPTION.—Such term does not in-
 24 clude cosmetic surgery performed to reshape

1 normal structures of the body to improve ap-
 2 pearance or self-esteem.

3 “(b) NOTICE.—A group health plan under this part
 4 shall comply with the notice requirement under section
 5 714(b) of the Employee Retirement Income Security Act
 6 of 1974 with respect to the requirements of this section
 7 as if such section applied to such plan.”.

8 (B) CONFORMING AMENDMENT.—Section
 9 2723(c) of the Public Health Service Act (42
 10 U.S.C. 300gg–23(c)) is amended by striking
 11 “section 2704” and inserting “sections 2704
 12 and 2707”.

13 (2) ERISA AMENDMENTS.—

14 (A) IN GENERAL.—Subpart B of part 7 of
 15 subtitle B of title I of the Employee Retirement
 16 Income Security Act of 1974 (29 U.S.C. 1185
 17 et seq.) is amended by adding at the end the
 18 following:

19 **“SEC. 714. STANDARDS RELATING TO BENEFITS FOR MINOR**
 20 **CHILD’S CONGENITAL OR DEVELOPMENTAL**
 21 **DEFORMITY OR DISORDER.**

22 “(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-
 23 GERY.—

24 “(1) IN GENERAL.—A group health plan, and a
 25 health insurance issuer offering group health insur-

1 ance coverage, that provides coverage for surgical
2 benefits shall provide coverage for outpatient and in-
3 patient diagnosis and treatment of a minor child's
4 congenital or developmental deformity, disease, or
5 injury. A minor child shall include any individual
6 through 21 years of age.

7 “(2) REQUIREMENTS.—Any coverage provided
8 under paragraph (1) shall be subject to pre-author-
9 ization or pre-certification as required by the plan or
10 issuer, and such coverage shall include any surgical
11 treatment which, in the opinion of the treating phy-
12 sician, is medically necessary to approximate a nor-
13 mal appearance.

14 “(3) TREATMENT DEFINED.—

15 “(A) IN GENERAL.—In this section, the
16 term ‘treatment’ includes reconstructive sur-
17 gical procedures (procedures that are generally
18 performed to improve function, but may also be
19 performed to approximate a normal appear-
20 ance) that are performed on abnormal struc-
21 tures of the body caused by congenital defects,
22 developmental abnormalities, trauma, infection,
23 tumors, or disease, including—

1 “(i) procedures that do not materially
 2 affect the function of the body part being
 3 treated; and

4 “(ii) procedures for secondary condi-
 5 tions and follow-up treatment.

6 “(B) EXCEPTION.—Such term does not in-
 7 clude cosmetic surgery performed to reshape
 8 normal structures of the body to improve ap-
 9 pearance or self-esteem.

10 “(b) NOTICE UNDER GROUP HEALTH PLAN.—The
 11 imposition of the requirements of this section shall be
 12 treated as a material modification in the terms of the plan
 13 described in section 102(a)(1), for purposes of assuring
 14 notice of such requirements under the plan; except that
 15 the summary description required to be provided under the
 16 last sentence of section 104(b)(1) with respect to such
 17 modification shall be provided by not later than 60 days
 18 after the first day of the first plan year in which such
 19 requirements apply.”.

20 (B) CONFORMING AMENDMENTS.—

21 (i) Section 731(c) of the Employee
 22 Retirement Income Security Act of 1974
 23 (29 U.S.C. 1191(c)) is amended by strik-
 24 ing “section 711” and inserting “sections
 25 711 and 714”.

1 (ii) Section 732(a) of the Employee
 2 Retirement Income Security Act of 1974
 3 (29 U.S.C. 1191a(a)) is amended by strik-
 4 ing “section 711” and inserting “sections
 5 711 and 714”.

6 (iii) The table of contents in section 1
 7 of the Employee Retirement Income Secu-
 8 rity Act of 1974 is amended by inserting
 9 after the item relating to section 713 the
 10 following:

“Sec. 714. Standards relating to benefits for minor child’s congenital or develop-
 mental deformity or disorder.”.

11 (3) INTERNAL REVENUE CODE AMEND-
 12 MENTS.—Subchapter B of chapter 100 of the Inter-
 13 nal Revenue Code of 1986 is amended—

14 (A) in the table of sections, by inserting
 15 after the item relating to section 9812 the fol-
 16 lowing:

“Sec. 9813. Standards relating to benefits for minor child’s con-
 genital or developmental deformity or disorder.”;
 and

17 (B) by inserting after section 9812 the fol-
 18 lowing:

1 **“SEC. 9813. STANDARDS RELATING TO BENEFITS FOR**
 2 **MINOR CHILD’S CONGENITAL OR DEVELOP-**
 3 **MENTAL DEFORMITY OR DISORDER.**

4 “(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-
 5 GERY.—

6 “(1) IN GENERAL.—A group health plan, and a
 7 health insurance issuer offering group health insur-
 8 ance coverage, that provides coverage for surgical
 9 benefits shall provide coverage for outpatient and in-
 10 patient diagnosis and treatment of a minor child’s
 11 congenital or developmental deformity, disease, or
 12 injury. A minor child shall include any individual
 13 through 21 years of age.

14 “(2) REQUIREMENTS.—Any coverage provided
 15 under paragraph (1) shall be subject to pre-author-
 16 ization or pre-certification as required by the plan or
 17 issuer, and such coverage shall include any surgical
 18 treatment which, in the opinion of the treating phy-
 19 sician, is medically necessary to approximate a nor-
 20 mal appearance.

21 “(3) TREATMENT DEFINED.—

22 “(A) IN GENERAL.—In this section, the
 23 term ‘treatment’ includes reconstructive sur-
 24 gical procedures (procedures that are generally
 25 performed to improve function, but may also be
 26 performed to approximate a normal appear-

ance) that are performed on abnormal structures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease, including—

“(i) procedures that do not materially affect the function of the body part being treated; and

“(ii) procedures for secondary conditions and follow-up treatment.

“(B) EXCEPTION.—Such term does not include cosmetic surgery performed to reshape normal structures of the body to improve appearance or self-esteem.”.

(b) INDIVIDUAL HEALTH INSURANCE.—

(1) IN GENERAL.—Part B of title XXVII of the Public Health Service Act is amended by inserting after section 2752 the following:

“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR MINOR CHILD’S CONGENITAL OR DEVELOPMENTAL DEFORMITY OR DISORDER.

“(a) REQUIREMENTS FOR RECONSTRUCTIVE SURGERY.—

“(1) IN GENERAL.—A group health plan, and a health insurance issuer offering group health insurance coverage, that provides coverage for surgical

benefits shall provide coverage for outpatient and inpatient diagnosis and treatment of a minor child's congenital or developmental deformity, disease, or injury. A minor child shall include any individual through 21 years of age.

“(2) REQUIREMENTS.—Any coverage provided under paragraph (1) shall be subject to pre-authorization or pre-certification as required by the plan or issuer, and such coverage shall include any surgical treatment which, in the opinion of the treating physician, is medically necessary to approximate a normal appearance.

“(3) TREATMENT DEFINED.—

“(A) IN GENERAL.—In this section, the term ‘treatment’ includes reconstructive surgical procedures (procedures that are generally performed to improve function, but may also be performed to approximate a normal appearance) that are performed on abnormal structures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease, including—

“(i) procedures that do not materially affect the function of the body part being treated; and

1 “(ii) procedures for secondary condi-
2 tions and follow-up treatment.

3 “(B) EXCEPTION.—Such term does not in-
4 clude cosmetic surgery performed to reshape
5 normal structures of the body to improve ap-
6 pearance or self-esteem.

7 “(b) NOTICE.—A health insurance issuer under this
8 part shall comply with the notice requirement under sec-
9 tion 714(b) of the Employee Retirement Income Security
10 Act of 1974 with respect to the requirements referred to
11 in subsection (a) as if such section applied to such issuer
12 and such issuer were a group health plan.”.

13 (2) CONFORMING AMENDMENT.—Section
14 2762(b)(2) of the Public Health Service Act (42
15 U.S.C. 300gg–62(b)(2)) is amended by striking
16 “section 2751” and inserting “sections 2751 and
17 2753”.

18 (c) EFFECTIVE DATES.—

19 (1) GROUP HEALTH COVERAGE.—The amend-
20 ments made by subsection (a) shall apply with re-
21 spect to group health plans for plan years beginning
22 on or after January 1, 2004.

23 (2) INDIVIDUAL HEALTH COVERAGE.—The
24 amendment made by subsection (b) shall apply with
25 respect to health insurance coverage offered, sold,

1 issued, renewed, in effect, or operated in the indi-
2 vidual market on or after such date.

3 (d) COORDINATED REGULATIONS.—Section 104(1)
4 of Health Insurance Portability and Accountability Act of
5 1996 (42 U.S.C. 300gg–92 note) is amended by striking
6 “this subtitle (and the amendments made by this subtitle
7 and section 401)” and inserting “the provisions of part
8 7 of subtitle B of title I of the Employee Retirement In-
9 come Security Act of 1974, the provisions of parts A and
10 C of title XXVII of the Public Health Service Act, and
11 chapter 100 of the Internal Revenue Code of 1986”.

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